

## Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 SAJ-01 IO-11 ACDA-05 CIAE-00 DODE-00

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SP-02 SS-15 USIA-06 /076 W

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R 271813Z FEB 76

FM AMEMBASSY BONN

TO SECSTATE WASHDC 6811

INFO USMISSION USBERLIN

AMEMBASSY BERLIN

AMEMBASSY LONDON

AMEMBASSY MOSCOW

AMEMBASSY PARIS

USMISSION EC BRUSSELS

USMISSION NATO BRUSSELS

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E.O. 11652: GDS

TAGS: PFOR PGOV EEC WB GW US UK FR

SUBJECT: BERLIN AND DIRECT ELECTIONS TO THE EUROPEAN  
PARLIAMENT

REFS: (A) USBER 364; (B) USEC 1675; (C) BONN 2774

BEGIN SUMMARY. THE UK HAS GIVEN PRELIMINARY APPROVAL TO  
THE FRG PROPOSAL THAT BERLIN DEPUTIES TO THE EUROPEAN  
PARLIAMENT BE CHOSEN BY THE BERLIN HOUSE OF REPRESENTA-  
TIVES. LONDON HAS ASKED, HOWEVER, WHETHER IT MIGHT  
NOT BE PREFERABLE TO SET OUT THE SPECIAL BERLIN  
REQUIREMENTS IN A PROTOCOL TO THE EC CONVENTION ON  
DIRECT ELECTIONS, RATHER THAN IN A UNILATERAL FRG  
DECLARATION. FRG BONN GROUP REPS EXPRESSED DIS-  
AGREEMENT WITH THE SUGGESTION AND WITH SEVERAL BRITISH  
PROPOSALS FOR TEXTUAL CHANGES IN THE FRG DECLARATION.  
ALLIED REPS, MEANWHILE, HAVE DISCUSSED THE DESIRABILITY  
OF MAKING A GENERAL RESERVATION, WHEN EXTENSION OF THE  
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NEW EC CONVENTION TO BERLIN IS APPROVED, WHICH WOULD

LEAVE OPEN THE POSSIBILITY OF FURTHER RESTRICTIONS ON VOTING RIGHTS OF BERLINERS OR ON APPLICATION OF EUROPEAN LEGISLATION TO BERLIN. ACTION REQUESTED: DEPARTMENT'S REACTION TO THE FRG DRAFT DECLARATION. END SUMMARY.

1. UK REP (HITCH) REPORTED LONDON'S INITIAL REACTIONS TO FRG DRAFT DECLARATION (PARA 5, REF C) AT FEBRUARY 24 BONN GROUP MEETING. HITCH STRESSED THAT, WHILE THERE WAS AS YET NO ENDORSEMENT OF THE POSITION AT MINISTERIAL LEVEL IN THE UK, LONDON WELCOMED THE GENERAL LINE THE FRG WAS PROPOSING -- I.E., SELECTION OF BERLINERS FOR THE EUROPEAN PARLIAMENT BY THE BERLIN HOUSE OF REPRESENTATIVES.

2. NOTING THAT THIS WAS NOT THE USUAL CASE OF EXTENDING A TREATY TO BERLIN BUT IN FACT THE CREATION OF A DEROGATION FROM THE TREATY FOR BERLIN, HITCH SAID LONDON WONDERED WHETHER THE SPECIAL REGIME FOR BERLIN SHOULD NOT BE INCORPORATED IN A SEPARATE PROTOCOL TO THE EC CONVENTION ON DIRECT ELECTIONS. BRITISH LEGAL EXPERTS IN BRUSSELS THOUGHT A PROTOCOL WOULD HAVE TWO ADVANTAGES OVER THE DECLARATION AS PROPOSED BY THE FRG: IT WOULD MAKE THE BERLIN SITUATION MORE "WATERTIGHT" VIS-A-VIS THE EUROPEAN COURT OF JUSTICE, AND IT WOULD MAKE IT PRESENTATIONALLY STRONGER VIS-A-VIS THE USSR.

3. HITCH ALSO SAID LONDON HAD FOUR COMMENTS WITH REGARD TO THE LANGUAGE OF THE FRG DRAFT:

A. THE UK THOUGHT THERE MIGHT BE ADVANTAGES IN REFERRING TO THE BERLINERS AS BEING "DESIGNATED" RATHER THAN "ELECTED" ("GEWAEHLT" IN THE FRG DRAFT). "DESIGNATED" WAS THE TERM USED IN THE MAY 12, 1949, LETTER FROM THE MILITARY GOVERNORS CONCERNING THE SENDING OF REPRESENTATIVES FROM BERLIN TO THE BUNDESTAG, AND THIS WOULD SEEM TO BE THE BEST PRECEDENT TO FOLLOW.

B. LONDON THOUGHT IT WOULD BE DESIRABLE TO AVOID DESCRIBING THE BERLINERS AS BEING FROM AMONG THOSE APPORTIONED TO THE FRG, THINKING IT WOULD BE UNDULY CONFIDENTIAL

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PROVOCATIVE TO THE SOVIETS TO DRAW ATTENTION TO THAT FACT.

C. THE UK HAD TRANSLATED THE BEGINNING OF THE SECOND PARAGRAPH OF THE FRG DRAFT AS "WITH REGARD TO" ALLIED RIGHTS AND RESPONSIBILITIES ("MIT RUECKSICHT AUF," IN THE FRG TEXT). LONDON THOUGHT THE PARAGRAPH SHOULD BEGIN WITH "SUBJECT TO" ALLIED RIGHTS AND

RESPONSIBILITIES.

D. HITCH ASKED WHETHER THE GERMANS WOULD CONSIDER  
USING "BERLIN (WEST)" INSTEAD OF "LAND BERLIN," TO  
"AVOID UNNECESSARY TRUOUBLE."

4. FRG REPS THEN COMMENTED AT SOME LENGTH ON THE

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BRITISH REACTION, STRESSING THAT THEIR REMARKS WERE VERY  
PRELIMINARY AND STRICTLY PERSONAL. THEY DISAGREED WITH  
THE IDEA OF A PROTOCOL CONCERNING BERLIN, AS THAT  
WOULD HAVE TO BE NEGOTIATED WITH THE OTHER MEMBERS OF  
THE EC. THE FRG HAD ALWAYS AVOIDED TAKING BERLIN  
PROBLEMS TO THE EC AND THOUGHT THEY SHOULD BE DEALT WITH  
IN THE BONN GROUP.

5. HENZE ALSO ASKED HITCH TO CLARIFY THE REFERENCE TO

MAKING THE BERLIN DECLARATION MORE "WATERTIGHT," AND HITCH SAID THE UK LEGAL ADVISOR IN BRUSSELS HAD MENTIONED TWO HYPOTHETICAL EXAMPLES. AN AGGRIEVED VOTER IN BERLIN, HE HAD SUGGESTED, MIGHT CONCEIVABLY BE SUCCESSFUL IN A CASE BEFORE THE EUROPEAN COURT OF JUSTICE IN WHICH HE CLAIMED THAT ARTICLE I OF THE DIRECT ELECTIONS CONVENTION COMMITTED THE FRG, THE UK AND FRENCH TO HOLDING DIRECT ELECTIONS IN BERLIN. THERE WAS ALSO A

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QUESTION OF WHETHER THE WORDING IN ARTICLE II AND ELSEWHERE IN THE TREATY, ON ELECTIONS "IN EACH MEMBER STATE," COULD GIVE RISE TO LITIGATION ON WHETHER BERLIN WAS OR WAS NOT PART OF THE FRG. IF ALL NINE HAD SIGNED THE PROTOCOL, SUCH LITIGATION COULD BE AVOIDED. HITCH CONFIRMED, HOWEVER, IN RESPONSE TO A QUESTION, THAT LONDON DID NOT RULE OUT THE POSSIBILITY OF EXPRESSING THE BERLIN RESERVATION THROUGH AN FRG DECLARATION; IT SIMPLY THOUGHT A PROTOCOL WOULD DO THE JOB BETTER.

6. MEICHESNER (BERLIN REPRESENTATION) PICKED UP HITCH'S REFERENCE TO PRESENTATIONAL ASPECTS VIS-A-VIS THE SOVIETS AND SAID IT WOULD SEEM PREFERABLE TO FOLLOW NORMAL FORMS AS CLOSELY AS POSSIBLE. A BERLIN DECLARATION WOULD BE MORE IN KEEPING WITH ESTABLISHED PROCEDURES, WHEREAS A PROTOCOL ON BERLIN WOULD BE SOMETHING NEW.

7. AS FOR "DESIGNATED" VERSUS "ELECTED," HENZE SAID THE LATTER HAD BEEN CHOSEN BECAUSE THAT WORD WAS USED IN THE FEDERAL ELECTION LAW WITH REGARD TO BERLIN REPRESENTATIVES IN THE BUNDESTAG. THAT SEEMED THE SAFEST PRECEDENT TO FOLLOW, AND THE FRG WOULD PREFER TO KEEP THE WORD "ELECTED." MEICHESNER ADDED THAT THE ALLIES, SUBSEQUENT TO THE 1949 LETTER, HAD APPROVED THE TERM "ELECTED" IN AUTHORIZING TAKE-OVER OF THE FEDERAL ELECTION LAW IN BERLIN. HE NOTED ALSO THAT "GEWAEHLT" MEANS NOT ONLY "ELECTED" BUT "CHOSEN."

8. AS FOR DESCRIBING THE BERLINERS AS BEING FROM AMONG THOSE APPORTIONED TO THE FRG, HENZE SAID THAT THE BERLIN DEPUTIES ARE INCLUDED IN THE OVER-ALL NUMBER OF FRG MEMBERS OF THE EUROPEAN PARLIAMENT AND THAT THE WORDING OF THE FRG DRAFT WAS ACCURATE. TO THIS, DUISBERG (FONOFF LEGAL SECTION) ADDED THAT NEITHER THE FRG NOR THE ALLIES HAD ANY INTEREST IN IMPLYING THAT THE MEMBERS FROM BERLIN CONSTITUTED A SEPARATE REPRESENTATION, OR THAT THERE WAS A SPECIAL BERLIN CONTINGENT IN THE EUROPEAN PARLIAMENT. BERLIN WAS NOT A MEMBER OF THE EC.

9. FRG REPS SUGGESTED THAT "WITH REGARD TO" WAS  
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PERHAPS NOT AN ACCURATE TRANSLATION OF "MIT RUECKSICHT AUF." IN ANY CASE, THEY THOUGHT THAT "SUBJECT TO" WOULD NOT BE AN ACCURATE EXPRESSION. THE SECOND PARAGRAPH OF THE FRG DRAFT WAS MEANT TO SET FORTH ALL OF THE CONDITIONS OF A SEPARATE REGIME FOR BERLIN. "SUBJECT TO" WOULD IMPLY THAT UNSPECIFIED ADDITIONAL CONDITIONS MIGHT APPLY.

10. FINALLY, FRG REPS NOTED THAT "BERLIN (WEST)" HAD NEVER BEEN USED IN TREATIES AND THAT TO CHANGE FROM "LAND BERLIN" WOULD INVOLVE A MAJOR POLICY CHANGE FOR THE FRG.

11. BOTH US AND FRENCH REPS SAID THEY HAD NO REACTIONS TO REPORT FROM CAPITALS AS YET. LATTER SAID HE COULD, HOWEVER, STATE THAT PARIS WOULD AGREE WITH THE FRG'S OBJECTION TO "BERLIN (WEST)," ALBEIT FOR DIFFERENT REASONS.

12. IN COMMENTING ON UK PRESENTATION, US REP SAID THE QUESTION OF WHETHER THE BERLIN RESTRICTIONS WERE TO BE SPELLED OUT IN A DECLARATION BY THE FRG OR IN A PROTOCOL WAS ESSENTIALLY AN INTERNAL ONE FOR EC MEMBERS, THOUGH HE ASSUMED THE FRG WOULD IN EITHER CASE HAVE TO OBTAIN

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THE CONSENT OF THE OTHER EIGHT TO A SEPARATE  
SYSTEM FOR BERLIN. HENZE ACKNOWLEDGED THIS TO BE TRUE,  
BUT SAID THE PRECISE WORDING OF A PROTOCOL WOULD HAVE  
TO BE NEGOTIATED WITH THE OTHER EIGHT, WHEREAS THE  
WORDING OF AN FRG DECLARATION WOULD NOT.

13. US REP ALSO ADDED THAT, BEFORE REACTING TO THE FRG  
DRAFT DECLARATION, THE US WOULD WISH TO GIVE MORE STUDY  
TO THE BROADER QUESTION OF WHETHER ANY OTHER  
RESERVATIONS WOULD BE REQUIRED. HENZE RECALLED THAT  
GEHLHOFF HAD EMPHASIZED TO THE THREE ALLIED AMBASSADORS  
THE PREVIOUS DAY (BONN 3008) THAT IT WOULD BE VERY  
DIFFICULT FOR THE FRG TO CONSIDER A SYSTEM IN WHICH  
BERLIN MEMBERS WOULD HAVE A DIFFERENT STATUS OR MORE  
LIMITED RIGHTS IN THE EUROPEAN PARLIAMENT THAN THEY  
NOW HAVE.

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14. US REP ALSO SAID HE THOUGHT DEPARTMENT, WHEN IT  
REACTED TO FRG DRAFT, WOULD PLACE LESS EMPHASIS THAN  
HAD LONDON ON THE SOVIET FACTOR. HE THOUGHT IT CERTAIN  
THAT THE SOVIETS WOULD PROTEST NO MATTER WHAT ACTION WAS  
TAKEN BY THE FRG AND THE ALLIES, AND SAID THE BASIC  
CONSIDERATION WAS WHAT WAS REQUIRED TO PRESERVE ALLIED  
RIGHTS AND RESPONSIBILITIES, NOT HOW TO AVOID A CON-  
FRONTATION WITH THE SOVIETS.

15. COMMENT. WE TEND TO AGREE WITH USBER'S VIEWS  
THAT IT WOULD BE BOTH DIFFICULT AND PREMATURE TO ATTEMPT  
TO SPELL OUT AT THIS TIME PRECISE RESTRICTIONS ON VOTING  
RIGHTS OF BERLINERS. ON THE OTHER HAND, GIVEN THE  
GROWING ASSUMPTION THAT BERLINERS WILL CONTINUE TO BE  
EQUAL TO ALL OTHER DEPUTIES IN THE EUROPEAN PARLIAMENT

(PARA 4, REF A), WE BELIEVE IT WOULD BE A  
MISTAKE NOT TO GIVE WARNING THAT SOME RESTRICTIONS  
MIGHT HAVE TO BE IMPOSED AT A LATER DATE, AT LEAST  
WITH RESPECT TO INCREASED POWERS OF THE  
EUROPEAN PARLIAMENT AND POSSIBLY WITH REGARD TO VOTING  
RIGHTS. FAILURE TO DO SO WOULD TEND TO CONFIRM THE  
PRESENT ASSUMPTION OF THE GERMANS AND COMPLICATE FUTURE  
RESTRICTIVE ACTION.

16. IN A TRIPARTITE DISCUSSION ON FEBRUARY 23, ALLIED  
REPS CONSIDERED THE DESIRABILITY OF AN OVER-ALL  
RESERVATION WHICH WOULD LEAVE OPEN THE POSSIBILITY OF A  
SUBSEQUENT RESTRICTION, AND THE FRENCH REP IS TRYING HIS  
HAND AT A DRAFT. USBER'S DRAFT IN PARA 6, REFTEL,  
WOULD SEEM TO BE AIMED IN THAT SAME DIRECTION.

17. WE HAD NOT EXPECTED THE UK REP TO SEEK  
INSTRUCTIONS SO QUICKLY, BUT NOW THAT THOSE INSTRUCTIONS  
HAVE BEEN RECEIVED AND REPORTED WE BELIEVE IT WOULD BE  
USEFUL TO THE CONSULTATIVE PROCESS ALSO TO HAVE THE  
DEPARTMENT'S EARLY REACTION TO THE BASIC PRINCIPLE  
REFLECTED IN THE FRG DRAFT -- I.E., THAT BERLIN DEPUTIES  
WILL BE ELECTED BY THE BERLIN HOUSE OF REPRESENTATIVES.  
AS INDICATED IN REF (C) WE BELIEVE THE BASIC  
PRINCIPLE IS SOUND AND PROBABLY THE MOST LOGICAL  
PROCEDURE TO ADOPT, AND WE THEREFORE RECOMMEND THAT  
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THE DEPARTMENT CONCUR.

18. ACTION REQUESTED: DEPARTMENT'S GUIDANCE ON THE  
FRG DRAFT.  
HILLENBRAND.

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## Message Attributes

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**Copy:** SINGLE  
**Draft Date:** 27 FEB 1976  
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**Disposition Approved on Date:**  
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**Disposition Case Number:** n/a  
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